Case Comments

Tort Liability for Cult Deprogramming: *Peterson v. Sorlien*

Over the past decade, Americans have witnessed with some alarm the proliferation of new religious cults. The Hare Krishna, the Moonies, and the Children of God represent only the tip of a vast mystic iceberg. These groups are characterized by the devotion of their members to cult doctrine, by group identity, and by leadership authority. The radical personality changes noted in new devotees have led to charges that the cults use brainwashing and mind control techniques to attract and retain members. This conviction has led many parents to abduct their children from cults in an attempt to liberate the captive mind via intense confrontation: the process popularly known as deprogramming.

During her freshman year at college, Susan Peterson joined a religious organization known as The Way. Her parents became concerned over radical changes in her personality as she became more involved with the group. With the help of professional deprogrammers, Susan's parents removed her from the cult and detained her against her will. Although the parents were successful in persuading her to renounce the cult, Susan later rejoined The Way and brought suit against her parents and the deprogrammers for false imprisonment and intentional infliction of emotional distress. In *Peterson v. Sorlien*[1] the Supreme Court of Minnesota found no tort liability because Susan had consented to her parents' actions beginning on the fourth day of the deprogramming.[2] A minority opinion objected to the retroactive application of the consent.[3]

This Case Comment will explore briefly the history and nature of the cult phenomenon in America, with an emphasis on previous litigation involving deprogramming attempts. The *Peterson* opinion will be examined in detail, and the various bases for tort liability will be explored in the context of a typical deprogramming case. The majority's use of consent as a defense will be examined and supported in light of cultic mind control techniques and common-law capacity doctrines.

I. Background

A. *Cults in America*

The cult phenomenon in America has its roots in the human potential movement of the 1960s. In that decade Americans became familiar with encounter groups, primal therapy, Gestalt, and a host of other consciousness

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1. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981). For a recent discussion of this case, see 15 AKRON L. REV. 165 (1981).

2. 299 N.W.2d 123, 129 (Minn. 1980).

3. *Id.* at 134 (Wahl, J., dissenting in part, concurring in part).

expanding techniques.[4] In the early 1970s this desire for self-realization began to channel itself into what appeared to be more traditional religious areas. Interest in Eastern meditative religions grew, and membership in a variety of seemingly Christian groups increased.[5] By the mid-1970s America's young people were joining new religious cults in unprecedented numbers. In 1977 estimates of the number of Americans involved in cults were as high as 750,000.[6] With the rise of the cults came the phenomenon of parental attempts to extricate children from cult influence. In 1977 the American Civil Liberties Union estimated that deprogramming attempts occurred five to ten times per week in the United States.[7]

By early 1978, however, the cults were beginning to lose converts.[8] Cult membership declined because of government inquiries into cult practices, unfavorable publicity, and the success of court-sponsored conservatorships as a means of removing members from the cults.[9] Public dismay over the November 1978 poisoning of over 900 members of Jim Jones' People's Temple in Jonestown, Guyana, further damaged the cult's image.[10] Concurrent with the decline in cult membership came a decline in deprogrammings. One 1980 report indicated that deprogramming attempts had "slowed to a trickle," largely because of unfavorable court rulings.[11]

Recent evidence indicates that the cults are experiencing a renaissance as they recover from the unfavorable publicity surrounding Jonestown.[12] Cults are channeling their energies into new areas, including business acquisitions, while seeking to avoid any publicity.[13] It appears that deprogramming will remain an issue through this decade.[14]

A number of characteristics differentiate modern cults from established religions. For the purpose of this Case Comment, a cult can be identified by the presence of the following:

(1) Total allegiance to a powerful, living leader, often thought to be a messiah, whose pronouncements form the basis for cult doctrine and practice;

(2) The prohibition of rational thought;

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4. F. CONWAY & J. SIEGELMAN, SNAPPING 13–14 (1978).

5. *Id.* at 14.

6. Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S. CAL. L. REV. 1, 6 nn.24–25 (1977).

7. *Religious Cults: Is the Wild Fling Over?*, U.S. NEWS & WORLD REP., Mar. 27, 1978, at 44, 44.

8. *Id.*

9. *Id.* For a discussion of conservatorships as a tool of deprogramming, see *infra* text accompanying notes 97–107.

10. *A Comeback for Religious Cults?*, U.S. NEWS & WORLD REP., Nov. 24, 1980, at 73, 73.

11. *Id.* at 74. For a discussion of various court rulings on deprogramming, see *infra* text accompanying notes 63–107.

12. *A Comeback for Religious Cults?*, U.S. NEWS & WORLD REP., Nov. 24, 1980, at 73, 74.

13. *Id.*

14. See, for example, Rosner v. Patrick, No. CIV-81-121C (W.D.N.Y., filed Feb. 13, 1981). The complaint, filed by an adherent of Transcendental Meditation against her parents and deprogrammers, charged a conspiracy to interfere with her civil rights in violation of the Civil Rights Act. For additional litigation under the Civil Rights Act, see *infra* text accompanying notes 73–93.

(3) Deceptive recruiting techniques;
(4) The use of coercive persuasion, mind control, and brainwashing techniques to attract and retain members;[15] and
(5) Isolation from the outside world.[16]

Many groups meet these criteria, but an elite class of cults dominates the field. These are the largest and most prominent cults, and the ones most frequently involved in legal battles. They are the Unification Church, The Way International, The Divine Light Mission, The International Society for Krishna Consciousness, and The Children of God.

The Unification Church was founded in Seoul, Korea, in 1954.[17] Its founder and current leader is Sun Myung Moon, a Korean industrialist. From Moon derives the popular name for members of the cult: Moonies. Moon sent his first missionary to the United States in 1959.[18] The church begins its recruiting process at an initial dinner meeting, which is followed by a weekend seminar retreat. Recruiters do not reveal the identity of the group as a religious organization with Moon at its head until well into the indoctrination process.[19] The Unification Church allegedly uses techniques of mind control during indoctrination.[20] Members of the church worship Sun Myung Moon as the messiah of God, the Lord of the Second Advent.[21] In late 1980 the Unification Church claimed membership of 30,000 in the United States.[22]

The Way International, known simply as The Way, was founded by Victor Paul Wierwille, a former minister in the United Church of Christ. The cult, still led by Wierwille, has its headquarters in New Knoxville, Ohio. Wierwille claims to have started the cult in 1942, but it did not experience significant growth until the late 1960s.[23] Today The Way claims 100,000 dedicated followers.[24] All the teachings of the church originate from Wierwille's personal interpretation of the Bible, contained in a series of videotapes, which cost members eighty-five dollars.[25]

The Divine Light Mission is a worldwide organization that derives its theology principally from Hindu scriptures.[26] Members see their leader, the Guru Maharaj Ji, as a messiah in the line of Jesus, Buddha, and Mohammed.[27] The Guru founded the American branch of the cult in 1971, when he was

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15. *See infra* text accompanying notes 205–21.
16. This list is adapted from Rudin, *The Cult Phenomenon: Fad or Fact?*, 9 N.Y.U. REV. L. & SOC. CHANGE 17, 24–25 (1980). A strikingly similar list is given in C. STONER & J. PARKE, ALL GODS CHILDREN 4 (1977) [hereinafter cited as STONER & PARKE].
17. J. YAMAMOTO, THE PUPPET MASTER 39 (1977).
18. *Id.* at 40.
19. STONER & PARKE, *supra* note 16, at 7.
20. For a description of mind control techniques used by the cults, see *infra* text accompanying notes 205–21.
21. STONER & PARKE, *supra* note 16, at 37.
22. *A Comeback for Religious Cults?*, U.S. NEWS & WORLD REP., Nov. 24, 1980, at 73, 73.
23. J. SPARKS, THE MIND BENDERS 189 (1979).
24. *A Comeback for Religious Cults?*, U.S. NEWS & WORLD REP., Nov. 24, 1980, at 73, 73.
25. J. SPARKS, THE MIND BENDERS 201 (1979).
26. STONER & PARKE, *supra* note 16, at 39.
27. *Id.*

thirteen years old.[28] Extensive meditation allegedly serves as a means of controlling the minds of cult members.[29] The Divine Light Mission has over two hundred local branches in the United States, along with a chain of food stores and filling stations.[30] In 1979 the cult claimed over one million devotees worldwide.[31]

The familiar sight of young men sporting bald heads and orange robes, chanting and dancing on street corners or in airports, makes the International Society for Krishna Consciousness (the Hare Krishna) the most visible and bizarre cult. Its current leader, A. C. Bhaktivedanta, Swami Prabhupada, founded the cult in New York in 1965.[32] Members of the cult are notorious for their aggressive fund raising techniques. The Society for Krishna Consciousness, like the Divine Light Mission, emphasizes chanting and meditation in the Hindu tradition to achieve bliss.[33] Recent estimates put Krishna membership at 10,000 in the United States.[34]

In the late 1960s a former Baptist minister named David Berg founded what was to become The Children of God.[35] Berg called himself Moses and claimed to have had divine revelation of an impending natural disaster.[36] When shocking sexual behavior was revealed to be a hallmark of the cult,[37] the New York Attorney General made a public inquiry into the sexual and other practices of Berg's Children of God. The resulting report severely damaged the cult's reputation[38] and caused Berg and his followers to move the entire operation to Europe in 1974.[39]

These cults have astounded and alarmed Americans for over a decade. Frequently, parents with a child in one of these cults have seen removal by force as the only way to break the cult's hold on their child.

B. *Deprogramming*

Ted Patrick is America's most prolific deprogrammer, and his methods are typical of the profession.[40] Since his first deprogramming in 1971,[41] Patrick claims to have abducted over fifteen hundred cult members.[42] Numerous court opinions on deprogramming that bear his name attest to his activity in the field.[43]

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28. *Id.* at 58.
29. *See infra* text accompanying notes 205–21.
30. H. COX, TURNING EAST 92 (1977).
31. Rudin, *The Cult Phenomenon: Fad or Fact?*, 9 N.Y.U. REV. L. & SOC. CHANGE 17, 18 n.10 (1980).
32. STONER & PARKE, *supra* note 16, at 42.
33. *See id.* at 43.
34. *A Comeback for Religious Cults?*, U.S. NEWS & WORLD REP., Nov. 24, 1980, at 73, 73.
35. STONER & PARKE, *supra* note 16, at 65.
36. *Id.*
37. *Id.* at 50.
38. *Id.* at 50, 65.
39. *Id.* at 66.
40. Patrick describes his career as a deprogrammer in T. PATRICK & T. DULACK, LET OUR CHILDREN GO (1976) [hereinafter cited as PATRICK & DULACK].
41. *Id.* at 64–66.
42. F. CONWAY & J. SIEGELMAN, SNAPPING 69 (1978).
43. *See infra* text accompanying notes 63–83.

A typical Patrick deprogramming begins with the physical abduction of the cult member.[44] The parents meet the subject unexpectedly as he is leaving the cult residence and force him into a waiting car, often with the help of "hired muscle."[45] The cult member is driven to a predetermined site, usually a motel room or the home of a former cult member who is helping with the deprogramming. The subject is not free to leave, and frequently physical restraint is necessary.[46] Ideally, the deprogramming takes place in an upper-floor room in order to prevent escape out a window.[47] Typical precautions include a bathroom without a window or an inside lock, and the removal of the mouthpiece from the telephone.[48] Patrick has found that once local authorities are aware of what he and the parents are attempting to do, they decline to interfere and on occasion even assist in the process.[49]

Once the cult member is isolated from the cult, the actual deprogramming process begins. Patrick describes the process as "just talk."[50] The deprogrammer and the parents point out inconsistencies in the cult's beliefs and ask questions designed to lead the subject to see how he has been deceived. Patrick, well-versed in the Bible from his Methodist upbringing, often shows that Bible passages taken in context are contrary to the cult's altered version of Biblical truth.[51] The goal of the deprogramming process is to encourage the cult member to use his mind again and to think critically about his cult experience.[52]

If the deprogramming is successful, the subject will suddenly snap out of the cult mentality.[53] At this point the person expresses gratitude at being released from the cult and is ready to begin a long process of rehabilitation.[54] The deprogramming itself often takes less than a full day and seldom lasts longer than three days.[55]

Of course, not every deprogramming is typical. For instance, the process may not involve any abduction, but rather may occur during a holiday visit by the cult member.[56] It may be possible to arrange for a voluntary meeting between the cult member and a deprogrammer.[57]

Following a deprogramming the former cult member is susceptible to drifting back into the cult mentality, a phenomenon termed "floating" by the deprogrammers.[58] During floating, any contact with former associates, such

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44. PATRICK & DULACK, *supra* note 40, at 65.
45. *Id.* at 66–67.
46. *Id.* at 75.
47. *Id.* at 67.
48. *Id.* at 78.
49. *Id.* at 99, 145, 192.
50. *Id.* at 75.
51. *Id.* at 78.
52. *Id.* at 76.
53. *See infra* text accompanying notes 222–25.
54. PATRICK & DULACK, *supra* note 40, at 67.
55. *Id.* at 76.
56. This was the case in Peterson v. Sorlien, 299 N.W.2d 123, 127 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).
57. STONER & PARKE, *supra* note 16, at 224.
58. PATRICK & DULACK, *supra* note 40, at 211–14.

as a brief phone conversation, can persuade the person to rejoin the cult.[59] Once back in the cult, the member may be persuaded to bring suit against parents and deprogrammers.

C. *Deprogramming and the Courts*

Deprogramming attempts have resulted in numerous lawsuits brought by deprogramming subjects who later rejoined their cults. Cases have been decided under state and federal kidnapping statutes,[60] federal civil rights legislation,[61] and common-law tort theories.[62]

In *U.S. v. Patrick*[63] Ted Patrick was indicted for kidnapping under the federal kidnapping statute.[64] Patrick had been employed by the parents of Kathy Crampton to deprogram her from a religious cult in the State of Washington. Patrick admitted the abduction, and the case was tried without a jury on the sole issue of whether a defense of necessity was available, as set out in the Model Penal Code.[65] The trial judge held that the defense of necessity was available to both the parents and the deprogrammer when the parents reasonably believed that they were not physically capable of recapturing their daughter from imminent danger without assistance.[66] Ted Patrick was acquitted, and the decision was upheld on appeal.[67]

Similarly, Patrick later was charged with kidnapping, criminal false imprisonment, and conspiracy under Colorado law in *People v. Patrick*.[68] Patrick had been employed by parents of cult members to remove their daughters from a religious cult. Patrick drove the escape vehicle following the abduction and then performed the two-day deprogramming.[69] The trial judge refused to instruct the jury on the defense of necessity or choice of evils,[70] and the jury found Patrick guilty of criminal false imprisonment.[71] In affirming the verdict, the Colorado Court of Appeals held that in order for the choice of

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59. *Id.*

60. *See infra* text accompanying notes 63–72.

61. *See infra* text accompanying notes 73–93.

62. *See infra* text accompanying notes 94–96.

63. 532 F.2d 142 (9th Cir. 1976).

64. 18 U.S.C. § 1201 (Supp. 1979).

65. MODEL PENAL CODE § 3.02 (Proposed Official Draft 1962), which reads:

> Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that: (a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and (b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and (c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

66. 532 F.2d 142, 145 (9th Cir. 1976).

67. *Id.* at 147. The defense of necessity was not at issue on appeal. The Ninth Circuit Court of Appeals determined that to allow the United States to appeal would put the defendant in double jeopardy in violation of the fifth amendment. *Id.* at 146–47.

68. 541 P.2d 320 (Colo. Ct. App. 1975).

69. *Id.* at 321.

70. *Id.* at 322.

71. *Id.* at 321. *See* COLO. REV. STAT. § 18-3-303 (1973).

evils defense to apply, a public or private injury must be imminent, requiring emergency action.[72] The court found that no such showing had been made.

The most successful vehicle for recovery against parents and deprogrammers has been the federal Civil Rights Act.[73] Recovery has been granted under section 1983,[74] section 1985,[75] and section 1986[76] of the Act.

Mandelkorn v. Patrick[77] arose from an attempt to deprogram a member of the Children of God. The cult member brought suit under sections 1983 and 1985, alleging deprivation of the right to freedom of speech, religion, association, and interstate travel.[78] The district court held that the complaint stated valid causes of action[79] and that alleged police participation in the abduction satisfied the color of state law or state action requirement for recovery under section 1983.[80]

In another civil rights action, a member of the Unification Church brought suit under section 1985 in *Weiss v. Patrick.*[81] The district court found, as a factual matter, that the subject of the deprogramming attempt had failed to prove any injury or deprivation[82] and thus denied his recovery. Moreover, the court said that even if there had been proof of injury, recovery would be denied because of the lack of a class-based animus.[83]

In *Baer v. Baer*[84] a member of the Unification Church was abducted after her parents had obtained a conservatorship, or temporary custody, order

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72. 541 P.2d 320, 322 (Colo. Ct. App. 1975). *See* COLO. REV. STAT. § 18-1-702(1) (1973). For another recent case in which the defense of necessity was rejected, see People v. Patrick, 126 Cal. App. 3d 952, 179 Cal. Rptr. 276, (Ct. App. 1981). For an extensive discussion of prosecution of deprogrammers under criminal statutes, see LeMoult, *Deprogramming Members of Religious Sects*, 46 FORDHAM L. REV. 599, 621-29 (1978).

73. 42 U.S.C. §§ 1981-1986 (1976).

74. 42 U.S.C. § 1983 (1979):

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .

75. 42 U.S.C. § 1985(c) (1979):

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

76. 42 U.S.C. § 1986 (1976):

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and have power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured . . . .

77. 359 F. Supp. 692 (D.D.C. 1973).

78. *Id.* at 692. The same constitutional rights were asserted in each of the civil rights cases discussed below.

79. *Id.* at 697.

80. *Id.*

81. 453 F. Supp. 717 (D.R.I.), *aff'd mem.*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979).

82. *Id.* at 723.

83. *Id.* at 723-24. The class-based animus is a requirement for section 1985 recovery, which was set forth by the Supreme Court in Griffin v. Breckenridge, 403 U.S. 88, 102 (1970): "The language requiring intent to deprive of *equal* protection, or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action."

84. 450 F. Supp. 481 (N.D. Cal. 1978).

from a local judge.[85] Contrary to the decision in *Weiss*,[86] the district court found that a class-based animus was present in the deprogramming attempt; however, recovery under section 1985 was denied because the court found no constitutional power to reach an essentially private religious controversy.[87] The court also denied recovery under section 1983, holding that the conservatorship order did not satisfy the color of state law requirement.[88]

The district court held in *Augenti v. Cappellini*[89] that all the elements were present to state valid causes of action under sections 1983, 1985, and 1986 in a deprogramming controversy.[90] The court found state action by virtue of the presence of a uniformed police officer at the deprogramming session and cited *Baer*[91] as support for a finding of a class-based animus.[92]

Numerous deprogramming opinions since *Augenti* have found the required state action and class-based animus necessary for recovery under the Civil Rights Act.[93] Clearly, the Civil Rights Act is a viable means of recovery for a deprogramming victim if he can establish some minimal state involvement.

Until *Peterson v. Sorlien*[94] no court had addressed the issue of tort liability for an attempted deprogramming. The complaints in *Mandelkorn, Weiss, Baer,* and *Augenti*[95] alleged the torts of false imprisonment, assault, and battery, but the issue of tort liability was not examined in the written opinions. The later portions of this Case Comment will address the potential for tort actions against deprogrammers and parents.[96]

Largely because of the fear of being prosecuted or sued, parents and deprogrammers have sought legal means to accomplish deprogramming. These attempts frequently have taken the form of court-ordered conservatorships under state statutes empowering such orders.[97] Prosecutors from the

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85. *Id.* at 485. For a discussion of conservatorships, see *infra* text accompanying notes 97–107.

86. *See supra* text accompanying notes 81–83.

87. 450 F. Supp. 481, 489–96 (N.D. Cal. 1978). The court denied recovery under section 1986 as well, since recovery there depends on a violation of section 1985. *Id.* at 496.

88. *Id.* at 485–89.

89. 84 F.R.D. 73 (M.D. Pa. 1979).

90. *Id.* at 76–78.

91. *See supra* text accompanying notes 84–88.

92. 84 F.R.D. 73, 77–78 (M.D. Pa. 1979).

93. Ward v. Connor, 657 F.2d 45 (4th Cir. 1981) (congressional power to reach due to interstate travel), *cert. denied*, 102 S. Ct. 1253 (1982); Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980) (judge's nonjudicial agreement with defendants establishes color of state law; congressional power to reach due to interstate travel), *rev'g* 457 F. Supp. 70 (D. Ariz. 1978), *cert. denied*, 451 U.S. 939 (1981); Helander v. Patrick, No. 77 Civ. 2401 (S.D.N.Y. May 6, 1981) (allegation of an arrangement with state officials is sufficient state action for section 1983 recovery); Cooper v. Molko, 512 F. Supp. 563 (N.D. Cal. 1981) (that police knew of abduction but failed to take action held to establish state action).

94. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

95. *See supra* text accompanying notes 77–92. *See also* Taylor v. Gilmartin, 434 F. Supp. 909 (W.D. Okla. 1977) (plaintiff monk alleged assault, battery, and false imprisonment in connection with attempts to deprogram him from monastery experience).

96. *See infra* text accompanying notes 150–261.

97. *E.g.*, UNIFORM PROBATE CODE § 5-401 (1969):

> Upon petition and after notice and hearing in accordance with the provisions of this Part, the Court may appoint a conservator or make other protective order for cause as follows: . . . (2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability . . . .

District Attorney's office in Tucson, Arizona, have helped many parents obtain this assistance. The process begins with a writ of habeas corpus ordering the cult to produce the member for a court hearing on mental incompetence.[98] Notice often is served on the cult during predawn hours, a surprise designed to prevent the cult from removing the member from the jurisdiction.[99] After evidence of the member's radical personality change is presented at the hearing, the judge usually grants a fifteen- to thirty-day conservatorship to the parents, during which period the former cult member is questioned by a hired deprogrammer working under the supervision of a court psychologist.[100] After the conservatorship ends the person is free to return to the cult, but only one of twenty chooses to do so.[101]

A number of judicial opinions have resulted from deprogrammings that originated in conservatorship orders. The deprogramming that was the subject in *Baer v. Baer*[102] was accomplished by means of a conservatorship.[103] In *Rankin v. Howard*,[104] a civil rights action against parents and deprogrammers, the cult member's father had obtained a conservatorship order from a probate judge authorizing the father to take the cult member into custody for counseling, examination, and treatment.[105] Other conservatorship orders have specified that counseling and treatment may be performed by doctors, psychiatrists, psychologists, social workers, or lay persons,[106] thus presumably allowing participation by professional deprogrammers. In examining the legality of these procedures, a California Court of Appeals held that California's conservatorship statute was too vague to justify an order granted to facilitate deprogramming.[107]

The law regarding deprogramming is unsettled. Criminal actions against deprogrammers turn on the defense of necessity,[108] and civil rights actions have enjoyed a measure of success.[109] Plaintiffs have used the tort action as an alternate theory of recovery.[110]

The issue of tort liability for deprogramming is addressed in *Peterson v. Sorlien*.[111]

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98. U.S. NEWS & WORLD REP., June 14, 1976, at 52, 53–54.

99. *Id.* at 54.

100. *Id.*

101. *Id.*

102. 450 F. Supp. 481 (N.D. Cal. 1978). *See supra* text accompanying notes 84–88.

103. 450 F. Supp. 481, 485 (N.D. Cal. 1978).

104. 457 F. Supp. 70 (D. Ariz. 1978), *rev'd*, 633 F.2d 844 (9th Cir. 1980), *cert. denied*, 451 U.S. 939 (1981). *See supra* note 93.

105. 457 F. Supp. 70, 72 (D. Ariz. 1978).

106. *In re* Complaint as to the Conduct of Rudie, 290 Or. 471, 473, 622 P.2d 1098, 1100 (1981).

107. Katz v. Superior Court, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (Ct. App. 1977). For a discussion of conservatorships in general and the *Katz* case in particular, see LeMoult, *Deprogramming Members of Religious Sects*, 46 FORDHAM L. REV. 599, 630–35 (1978).

108. *See supra* text accompanying notes 63–72.

109. *See supra* text accompanying notes 73–93.

110. *See supra* text accompanying notes 94–96.

111. 299 N.W.2d 123, 126 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

II. FACTS AND HOLDING OF *Peterson v. Sorlien*

Susan Jungclaus grew up on her family's farm near Bird Island, Minnesota. While in high school she was active in Our Savior's Lutheran Church of Bird Island, singing in the youth choir and teaching a Sunday School class.[112] Susan graduated salutatorian of her high school class in 1973. The following autumn she began studies at Moorhead State College, where she was on the dean's list her freshman year.[113]

During her first year at college Susan joined the local chapter of The Way International.[114] She quickly became involved in the solicitation of new members and assisted with Way training sessions. She gave part of her income earned as a waitress to The Way.[115] Susan began to receive poor grades and left some courses incomplete, with the result that her academic performance barely met the standards for passing.[116]

Susan's parents became alarmed with the changes in their daughter. They watched as she became increasingly pale, tired, distraught, and irritable.[117] The frequency of Susan's contacts with the family decreased, and she became critical of her family's church and its teachings. Her mother was disturbed by the unsanitary conditions at a Way camp where Susan spent one summer.[118] During Susan's junior year in college her parents began to consider deprogramming, a possibility that they discussed with their minister, Paul Sorlien.[119] They decided to remove Susan from The Way.

On May 24, 1976, Susan was picked up following her third-quarter college examinations by her father, Norman Jungclaus, and her former pastor, Paul Sorlien. She was twenty-one years old at the time. Susan thought that the trip would be to the family home in Bird Island for a vacation; instead the three drove to a private home in Minneapolis to begin the deprogramming process.[120] All participants in the deprogramming became defendants in the subsequent lawsuit. Kathy Mills was the professional deprogrammer in the group and had participated in at least forty previous deprogrammings.[121] Veronica Morgel, whose son had been a member of a religious cult, provided the use of her home. Michele Perkins, a former member of The Way, also assisted in the deprogramming.[122] Susan's parents, Norman and Margaret Jungclaus, were present throughout, and Paul Sorlien, the Jungclaus' pastor, participated marginally.[123]

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112. Brief for Respondents at 3.
113. 299 N.W.2d 123, 126 (Minn. 1980).
114. *Id.*
115. *Id.* at 127.
116. Brief for Respondents at 4.
117. 299 N.W.2d 123, 127 (Minn. 1980).
118. Brief for Respondents at 4.
119. 299 N.W.2d 123, 131 (Minn. 1980).
120. *Id.* at 127.
121. Brief for Appellant and Appendix at 6.
122. *Id.* at 7.
123. 299 N.W.2d 123, 131 (Minn. 1980).

Once Susan was inside the Morgel residence, a dresser was moved to block one door, and Veronica Morgel blocked another door to prevent escape.[124] Susan's father and the others restrained her in the Morgel basement for several days.[125] She never was left alone during that initial period, and she repeatedly asked to be released.[126]

By the third day of her confinement, however, Susan's demeanor had changed completely.[127] She conversed normally with her father, went roller skating, played softball, and vacationed in Columbus, Ohio, with another former cult member. Susan even expressed a desire to extricate her fiancé, Kevin Peterson, from The Way.[128]

After the initial three-day period of protest, Susan had several opportunities to escape: she was often in public places virtually unguarded, uniformed police were present at the airports she visited, and in Columbus she was interviewed by a concerned F.B.I. agent. This period of acquiescence lasted thirteen days, from May 27, 1976, through June 9, 1976.[129] While in Columbus Susan spoke daily with her fiancé, who played The Way tapes and songs over the phone and begged her to come back to the cult. Upon returning to Minneapolis from Columbus on June 9, Susan contacted the police and soon rejoined The Way.[130] She later brought suit against those involved in the deprogramming attempt, charging false imprisonment and intentional infliction of emotional distress.[131]

The trial began on November 14, 1977, and lasted three weeks.[132] The case was tried before a jury of five women and one man, with Judge Bruce C. Stone, Hennepin County District Court, presiding.[133] Each of the defendants pleaded consent as a defense,[134] and defendant Sorlien also asserted necessity as a privilege defense. This necessity defense was rejected by the judge, who charged the jury accordingly.[135]

The trial judge directed a verdict in favor of defendant Sorlien on the basis that his minimal participation in the deprogramming made him not liable as a matter of law.[136] The other defendants were exonerated by jury verdict of the charges of false imprisonment;[137] however, Veronica Morgel and Kathy

124. Brief for Appellant and Appendix at 9.
125. 299 N.W.2d 123, 133 (Minn. 1980).
126. Brief for Appellant and Appendix at 11–12.
127. 299 N.W.2d 123, 127 (Minn. 1980).
128. *Id.*
129. *Id.* at 128.
130. *Id.* at 127.
131. *Id.* at 125.
132. Brief for Appellant and Appendix at 2.
133. Brief for Respondents at 9.
134. Brief for Appellant and Appendix at A-50 to A-61.
135. *Id.* at A-36:
Such a defense becomes applicable in a false imprisonment action only if and when the person detained is in imminent danger of immediate physical or mental injury. The privilege of detention then exists only for a limited period of time, until legal or medical authorities can be summoned. I charge you that as a matter of law, the defense of privilege or of necessity is not applicable . . . .
136. 299 N.W.2d 123, 131 (Minn. 1980).
137. *Id.* at 126.

Mills were found liable by the jury for intentional infliction of emotional distress.[138] After the judge denied plaintiff's motion for judgment notwithstanding the verdict on the claim of false imprisonment,[139] plaintiff appealed to the Supreme Court of Minnesota.

The main issue considered in Chief Justice Sheran's majority opinion was whether the trial court erred in failing to grant a judgment notwithstanding the verdict on the false imprisonment claim. In affirming the trial court, Sheran discussed at length the methods of mind control and coercive persuasion used by various cults.[140] Sheran's opinion indicates that the jury verdict must have been based on a finding of consent by the plaintiff, and the opinion finds ample basis in fact for such a finding.[141] Sheran recognized a problem with regard to the first three days of the deprogramming; during this time it was obvious that the plaintiff did not consent. But in his opinion Sheran reasoned that since the cult conditioning process may have impaired Susan's volitional capacity to consent, her consent on the third day could be applied retroactively to cover the entire confinement: "Following her readjustment, the evidence suggests that Susan was a different person, 'like her old self.' As such, the question of Susan's consent becomes a function of time. We therefore deem Susan's subsequent affirmation of defendants' actions dispositive."[142]

The court also addressed a number of peripheral issues on appeal. It held that evidence of The Way's practices and activities was admissible since it was necessary in evaluating each defendant's state of mind for the purpose of assessing punitive damages.[143] The supreme court held that the trial court may have erred in allowing the jury to consider that The Way was financing the lawsuit, but found that the error, if any, was not significant enough to merit reversal.[144] The court upheld the directed verdict in favor of defendant Sorlien.[145] Finally, the supreme court ruled that the trial court did not err in refusing to allow the plaintiff to add a civil rights[146] cause of action almost a year after the suit had been commenced.[147]

The dissent believed that the majority mishandled the consent issue.[148] Specifically, the dissent found no reason to allow the consent to relate back to the initial confinement and felt that the retroactive consent would set a "dangerous precedent."[149]

The *Peterson* case suggests an examination of tort recovery in deprogramming cases. The remainder of this Case Comment will review the el-

138. *Id.*
139. *Id.*
140. *Id. See infra* text accompanying notes 205–21.
141. *See supra* text accompanying notes 127–29.
142. 299 N.W.2d 123, 128 (Minn. 1980).
143. *Id.* at 129–30.
144. *Id.* at 130–31.
145. *Id.* at 131–32.
146. *See supra* text accompanying notes 73–93.
147. 299 N.W.2d 123, 132 (Minn. 1980).
148. *Id.* at 134 (Wahl, J., dissenting in part, concurring in part).
149. *Id.*

ements of several torts in the context of a typical deprogramming attempt and will then consider the proper role of consent in deprogramming cases.

III. TORT ELEMENTS IN A TYPICAL DEPROGRAMMING CASE

A. *Battery*

The elements of the tort of battery are (1) a volitional act,[150] (2) an intent to cause harmful or offensive contact or an imminent apprehension of such contact,[151] and (3) a resulting harmful or offensive contact.[152] These elements may be present in several phases of a typical deprogramming attempt.

The most obvious battery may occur during the initial abduction. Consider the following account of one such abduction by deprogrammer Ted Patrick:

> Wes [the cult member to be deprogrammed] had taken up a position facing the car, with his hands on the roof and his legs spread-eagled. There was no way to get him inside while he was braced like that. I had to make a quick decision. I reached down between Wes's legs, grabbed him by the crotch and squeezed—hard. He let out a howl, and doubled up, grabbing for his groin with both hands. Then I hit, shoving him headfirst into the back seat of the car and piling in on top of him.[153]

Of course, not all abductions are this violent, but frequently a physical shoving of the cult member into the escape vehicle does occur.[154] Both parents and deprogrammers have been involved with the use of force at this point.[155] The elements of a battery are clearly present here. The shoving, grabbing, and forcing into the car are volitional acts. While the parents and deprogrammers may not desire that the subject be harmed or offended, they clearly have knowledge to a substantial certainty that the resulting contact will be harmful or offensive. Thus, the intent requirement is satisfied.[156] Finally, contact usually results from the intended act and is offensive or harmful or both, as with the groin injury described above.

The abduction in *Peterson v. Sorlien*[157] was not accomplished by force. Rather, the plaintiff entered the car willingly because of a mistake about the ultimate destination.[158] Thus, the elements of battery were not present at this point in the *Peterson* deprogramming and, not surprisingly, battery was not alleged.[159]

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150. RESTATEMENT (SECOND) OF TORTS §§ 2, 13 (1965).

151. *Id.* at §§ 8A, 13.

152. *Id.* at §§ 13, 18. The absence of any defense may be considered to be an additional element. *See id.* at § 5. For a discussion of consent as a defense, see *infra* text accompanying notes 190–261. The defense of parental privilege or immunity seldom applies since the cult members in most cases are beyond the age of majority.

153. PATRICK & DULACK, *supra* note 40, at 96.

154. *See, e.g., id.* at 66–67, 138.

155. *Id.* at 164–66.

156. *See* RESTATEMENT (SECOND) OF TORTS § 8A (1965).

157. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

158. *Id.* at 127.

159. Brief for Appellant and Appendix at A-1, A-3.

Battery might occur during a deprogramming when the subject is detained at the site of the process. For example, the deprogrammer frequently uses force to keep the cult member from escaping, as this account by Ted Patrick illustrates: "Wes grabbed for the door, trying to jerk it open. But I got my arms around him and put him out of commission in a matter of seconds."[160] Similarly, testimony in the *Peterson* case indicated that both parents and deprogrammers used physical force to restrain the plaintiff.[161] Again, the elements of battery are present since the contact involved, which is offensive and may be harmful, clearly is intended to be just that.

Battery may arise at other points during a deprogramming. Ted Patrick reports having relatives restrain a Hare Krishna devotee while Patrick used scissors to cut the ceremonial ponytail off his otherwise bald head.[162] Such contact is more offensive than harmful, since the ponytail is an important symbol of the Krishna belief.[163] Parents, as well, may be involved in violence: "Wes had been screaming that his mother was evil, was of Satan, all sorts of filthy and outrageous things, and the father lost his patience finally and smacked him."[164] These incidents demonstrate that often the elements of battery are present in a typical deprogramming attempt.

B. *Assault*

The elements of the tort of assault are (1) a volitional act, (2) an intent to cause harmful or offensive contact or an imminent apprehension of such contact, and (3) a resulting imminent apprehension.[165] Another example drawn from the experience of deprogrammer Ted Patrick illustrates that these elements are present. Patrick reports the response of Ed Painter, an assistant in a deprogramming, to an attempted escape by a cult member: "At this, Ed Painter got furious and cocked his arm as if to lay Ed [the cult member] out cold. I managed to push him out of the way just in time."[166] After averting the violence, Patrick himself took control. While holding the cult member against the wall, Patrick said, "You listen to me! You so much as wiggle your toes again, I'm gonna put my fist down your throat!"[167] The elements of an assault are present in each of the two episodes. In each there is a volitional act. While words alone do not satisfy the act requirement, words together with acts are sufficient.[168] Here, cocking the arm and holding the subject against the wall, together with the threat of a fist down his throat in the second case, constitute such acts. In the first example Painter intended to cause a harmful contact,

160. PATRICK & DULACK, *supra* note 40, at 103.
161. Brief for Appellant and Appendix at 10.
162. PATRICK & DULACK, *supra* note 40, at 188.
163. *Id.*
164. *Id.* at 105.
165. RESTATEMENT (SECOND) OF TORTS § 21 (1965).
166. PATRICK & DULACK, *supra* note 40, at 188.
167. *Id.* at 189.
168. RESTATEMENT (SECOND) OF TORTS § 31 (1965).

and the contact was averted only by outside interference. In the second incident Patrick intended to create apprehension to discourage future escape attempts. Thus, in each case the intent requirement is met. It should be noted that Ed's option to escape the contact in the second case, by obedience to Patrick's command not to move, does not relieve Patrick of potential liability for assault.[169] Finally, the element of resulting apprehension is present, since Patrick reported that Ed's eyes "got bigger and bigger with fear."[170] A potential for an assault action against deprogrammers exists in such cases.[171]

C. *False Imprisonment*

The elements of the tort of false imprisonment are (1) a volitional act, (2) an intent to confine, (3) a resulting confinement, and (4) an awareness of the confinement by the prisoner, or harm from the confinement.[172] False imprisonment is probably the key tort in a deprogramming case since the essence of the typical deprogramming is confinement of the subject against his will throughout the process. An examination of the elements will show that they usually are present in deprogramming attempts.

The requirement of an act of confinement is very broad for false imprisonment. Not only an affirmative act of confinement, but also a failure to aid in release, satisfies this element.[173] Additionally, the act need not be one of force, but may be merely words or acts that induce a reasonable apprehension that force will be used if the subject does not submit.[174] Measures such as nailing windows shut at the site of the deprogramming[175] satisfy this element. In *Peterson v. Sorlien*[176] the confinement was caused by physical force,[177] threats of physical force,[178] and the creation of actual physical barriers.[179] It appears that it would be a rare deprogramming that did not include some act of confinement.

Confinement is clearly intended by the parents and deprogrammers. The essence of deprogramming is forced separation of the member from the cult. Deprogrammer Ted Patrick admits, "Yes, in some cases that means restraint. Yes, it also means the victim may not be free to leave when he wants to. When a victim is exceptionally vigorous, it may even mean a measure of

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169. *Id.* at § 30.

170. PATRICK & DULACK, *supra* note 40, at 189.

171. Consent as a defense to assault and other torts will be considered *infra* in the text accompanying notes 190–260.

172. RESTATEMENT (SECOND) OF TORTS § 35 (1965). *See* Durgin v. Cohen, 168 Minn. 77, 209 N.W. 532 (1926); Broughton v. State, 37 N.Y.2d 451, 335 N.E.2d 310, *cert. denied*, 423 U.S. 929 (1975). For a discussion of consent as a defense to false imprisonment, see *infra* text accompanying notes 193–94.

173. RESTATEMENT (SECOND) OF TORTS § 45 (1965).

174. Durgin v. Cohen, 168 Minn. 77, 79, 209 N.W. 532, 533 (1926). *See* RESTATEMENT (SECOND) OF TORTS §§ 40–40A (1965).

175. PATRICK & DULACK, *supra* note 40, at 15.

176. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

177. *Id.* at 133.

178. *Id.*

179. *See supra* text accompanying notes 124–25.

physical restraint."[180] Deprogrammers intend to cause confinement since without it they cannot do their job.

The intended acts almost always cause a resulting confinement, the third element of the tort of false imprisonment. Parents and deprogrammers seek to eliminate all possible avenues of escape and they usually succeed. The harsh consequences of attempted escapes from deprogrammings bear witness to the reality of confinement.[181]

Finally, the cult member almost always is aware of the confinement. In fact, deprogrammers take pains to point out to the subject that a confinement is taking place. Ted Patrick described his approach with an uncooperative member of the Unification Church: "'You're not going to talk. That's okay. You want to smile at me. Well, I'll smile right back at you. We'll smile together. I've got nothing else to do. I can stay here three, four months. Even longer. Nobody's going anywhere.'"[182]

D. *Intentional Infliction of Emotional Distress*

The elements of the tort of intentional infliction of emotional distress are (1) extreme and outrageous conduct, (2) intent to cause distress, and (3) resulting severe emotional distress.[183] In *Peterson v. Sorlien*[184] the judge instructed the jury that the law allows recovery only when the act was intentional or reckless and constituted extreme and outrageous conduct that caused severe fright or emotional distress.[185] These elements may not be present in a deprogramming attempt. Unless an enforced confinement for the purposes of religious discourse is per se outrageous, it is possible for a deprogramming attempt to occur without ever giving rise to this tort. Usually, the jury decides whether the conduct rises to the required level of outrage.[186]

Two incidents from the experiences of deprogrammer Ted Patrick exemplify conduct that might create a cause of action for the intentional infliction of emotional distress. The first involves a conversation between Patrick and a member of the Unification Church:

> As he [Patrick] talks, he works with a felt-tip pen on a photograph of [Church leader] Sun Myung Moon that he has taken from his briefcase. He draws a pair of

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180. PATRICK & DULACK, *supra* note 40, at 75.

181. *See supra* text accompanying notes 166–67.

182. PATRICK & DULACK, *supra* note 40, at 24. The authors go on to point out that seldom does a deprogramming last as long as five days. *Id.*

183. RESTATEMENT (SECOND) OF TORTS § 46 (1965). Reckless conduct may satisfy the intent requirement. *Id.* For a discussion of consent as a defense to this tort, see *infra* text accompanying notes 195–97.

184. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

185. Brief for Appellant and Appendix at A-37.

186. RESTATEMENT (SECOND) OF TORTS § 46 comment h (1965). For examples of conduct that has been found to be "extreme and outrageous," see Moore v. Greene, 431 F.2d 584 (9th Cir. 1970) (defendant wrote a letter characterizing the plaintiff as a "cheap liar, who would like to be vicious in his falsehoods, but cannot attain to such degree because of his own cowardice"); Newby v. Alto Riviera Apartments, 60 Cal. App. 3d 288, 131 Cal. Rptr. 547 (Ct. App. 1976) (landlord repeatedly used abusive language and threatened tenant's life); Turman v. Central Billing Bureau, 279 Or. 443, 568 P.2d 1382 (1977) (bill collector in numerous phone conversations called plaintiff "scum" and a "dead beat").

> horns on Moon's head, then a moustache, pointed ears, making a caricature of the Devil out of the image the boy has been conditioned to love and revere. . . . He holds up the vandalized picture. . . . "There's your god. There's the son of a bitch. Recognize him? That's who you worship. Satan the snake." [187]

Patrick reports a similar incident involving a member of the Hare Krishna cult: "He [the cult member] sat down abruptly. I had a picture of [cult leader] Prabhupada and I tore it up in front of him and said, 'There's the no good son of a bitch you worship. And you call him God!' The usual line of approach." [188]

The above conduct probably would satisfy the elements of the tort of intentional infliction of emotional distress. Defacing the image of someone's revered leader or deity, together with profane name-calling, would likely be considered extreme and outrageous. The intent of the actor is to create emotional distress, since deprogrammers hope that this distress will jar the subject into a critical analysis of his experience.[189] Finally, it is entirely reasonable to expect that such conduct would cause severe emotional distress to the cult member, who has been instilled with an almost fanatical devotion to the cult leader involved. Thus, the intentional infliction of emotional distress is at least a potential theory of recovery in a deprogramming attempt, depending perhaps on the specific methods used by the deprogrammer.

These four torts appear to be present in some degree in many deprogramming attempts. The next section of this Case Comment will explore the use of consent as a defense in deprogramming cases.

IV. THE DEFENSE OF CONSENT IN DEPROGRAMMING CASES

A. *The General Operation of Consent in Tort Cases*

Consent, the actual or apparent willingness for conduct to occur, is a potential defense to all intentional torts, including those torts discussed above.[190] In a sense, consent is more than just a defense since it negates the existence of any tort in the first place.[191] A brief survey of the law will affirm that consent operates as a defense to each of the four torts that may occur in a deprogramming case.

Consent is a defense to battery and assault. For instance, in a case alleging both assault and battery against a physician, the court observed that in the doctor-patient relationship, as in other situations involving an invasion of another's person, consent to the act by the person affected negates the contact as an actionable tort.[192]

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187. PATRICK & DULACK, *supra* note 40, at 24.
188. *Id.* at 189.
189. *Id.* at 76.
190. RESTATEMENT (SECOND) OF TORTS §§ 892, 892A (1965).
191. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 18 (4th ed. 1971).
192. Mims v. Boland, 110 Ga. App. 477, 482, 138 S.E.2d 902, 906 (Ct. App. 1964); *accord* Belger v. Arnot, 344 Mass. 679, 686, 183 N.E.2d 866, 869 (1962).

Similarly, consent operates as a defense to an allegation of false imprisonment. The Supreme Court of Oregon expressly includes consent as a part of its test in false imprisonment cases.[193] The Court of Appeals of Maryland applies a rule that in any action for false imprisonment, the plaintiff must prove by a preponderance of the evidence that he was deprived of his liberty by another without his consent.[194]

Consent also operates as a defense to an allegation of intentional infliction of emotional distress.[195] In *Carter v. Cangello*[196] the consent of the patient insulated a surgeon from liability for intentional infliction of emotional distress arising out of medical treatment.[197]

Consent can take two forms. The first is consent in fact, or actual "willingness . . . for conduct to occur."[198] The second, apparent consent, arises from words or actions reasonably understood by another to be intended as consent.[199] Even when a person does not in fact agree to the conduct of another, his words or acts or even his inaction may manifest a consent that will justify the other in relying upon them.[200] The classic example of apparent consent is found in *O'Brien v. Cunard Steamship Co.*[201] In *O'Brien* an immigrant steamship passenger presented her arm to a doctor for vaccination and later sued for assault. The Massachusetts Supreme Judicial Court held that since the plaintiff's behavior indicated consent the doctor was justified in his act, whatever her unexpressed feelings may have been.[202] Apparent consent also operates as a defense in false imprisonment actions. In *Coates v. Schwegmann Brothers Giant Super Markets, Inc.*[203] a Louisiana appellate court held that the plaintiff's nonresistance to confinement was an apparent consent, which relieved defendant of liability.[204]

Consent, therefore, is a powerful potential defense to all intentional torts. The following sections of this Case Comment will explore the significance of consent in deprogramming cases.

B. *Mind Control and the Cults*

The majority opinion in *Peterson v. Sorlien* concluded that many religious cults use mind control to attract and retain members.[205] Mental health

193. Roberts v. Coleman, 228 Or. 286, 293, 365 P.2d 79, 82 (1961).

194. Fine v. Kolodny, 263 Md. 647, 651, 284 A.2d 409, 411 (1971), *cert. denied*, 406 U.S. 928 (1972); *accord* White v. Levy Bros., 306 S.W.2d 829, 830 (Ky. 1957); Banks v. Town, 98 So. 2d 719, 722 (La. Ct. App. 1957).

195. RESTATEMENT (SECOND) OF TORTS § 49 (1965).

196. 105 Cal. App. 3d 348, 164 Cal. Rptr. 361 (Ct. App. 1980).

197. *Id.* at 349–51, 164 Cal. Rptr. at 362–63.

198. RESTATEMENT (SECOND) OF TORTS § 892 comment b (1965).

199. *Id.* at § 892(2).

200. *Id.* at § 892 comment c; *accord* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 18 (4th ed. 1971).

201. 154 Mass. 272, 28 N.E. 266 (1891).

202. *Id.* at 273, 28 N.E. at 266; *accord* Dicenzo v. Berg, 340 Pa. 305, 310, 16 A.2d 15, 17 (1940).

203. 152 So. 2d 865 (La. Ct. App. 1963).

204. *Id.* at 866.

205. 299 N.W.2d 123, 126 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

professionals agree that cults use mind control upon their converts. Margaret Thaler Singer, a professor and psychologist at the University of California, interviewed more than three hundred cult members and former cult members as part of a comprehensive study of this topic. She concluded that the cults use highly sophisticated techniques to induce behavioral change.[206] Among these techniques are long periods of prayer, chanting, meditation (in some cases, up to twenty-one hours a day), lengthy and repetitive doctrinal lectures, exclusion of family and other outside contacts, and restriction of sexual contacts.[207] Singer also identified the results that these techniques produce in cult members and ex-cult members: depression, incapacity to make decisions, loneliness, altered or trancelike states, blurred mental activity, uncritical passivity, and guilt.[208]

Other mental health professionals have developed a theory that regards cult mind control as a type of information disease.[209] According to this theory, cults use chanting and meditation to prevent the cult member from thinking. This prolonged cessation of thought results in the impairment or suspension of the ability to think and thus produces disorientation, detachment, withdrawal, and delusion.[210] "When that happens, not thinking becomes the norm, and with it there is a reduction in both feeling and awareness. Moreover, once a person's brain enters this state, the individual may be incapable of coming out of it."[211]

Legal commentators recognize that the cults use mind control techniques and have identified additional elements of the cult indoctrination process: intense peer pressure, manipulation of diet, sleep deprivation, lack of privacy and of time for reflection, and use of ritual to heighten the mystical experience.[212] One commentator concluded that these practices result in a complete personality transformation in the cult member.[213] Professor Richard Delgado of the U.C.L.A. Law School believes that these mind control techniques produce a state of heightened suggestibility in which the cult member is compelled to reorganize his thoughts and his life along cult lines.[214] Delgado concludes that the cult member literally loses the ability to think.[215]

In *Katz v. Superior Court*[216] a California appellate court heard testimony that the Unification Church of Sun Myung Moon sought to achieve mind

206. Singer, *Coming Out of the Cults*, PSYCHOLOGY TODAY, Jan. 1979, at 72, 72.
207. *Id.* at 75.
208. *Id.* at 75–79.
209. F. CONWAY & J. SIEGELMAN, SNAPPING 170 (1978).
210. *Id.*
211. *Id. See also* Conway & Siegelman, *Information Disease*, SCIENCE DIG., Jan. 1982, at 88.
212. Rudin, *The Cult Phenomenon: Fad or Fact?*, 9 N.Y.U. REV. L. & SOC. CHANGE 17, 19 (1980).
213. *Id.* at 20.
214. Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S. CAL. L. REV. 1, 13 (1977).
215. *Id.* at 21–22. The methods used by cults to control the minds of their members are strikingly similar to the brainwashing techniques employed by the Communist Chinese on American prisoners during the Korean War. *See* E. SCHEIN, COERCIVE PERSUASION 123–27 (1961).
216. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (Dist. Ct. App. 1977).

control through sleep deprivation, isolation, fear, inadequate diet, and intense guilt.[217] The father of one cult member testified that the personality of his daughter had become "child-like."[218] A psychiatrist who had examined the cult members testified to their mental narrowness, memory impairment, blunted emotions, child-like mentality, short attention spans, and paranoia.[219]

In *People v. Murphy*,[220] a case involving a charge of criminal unlawful imprisonment against the Hare Krishna cult, a New York superior court recognized the effects of cult brainwashing:

> The fact that indoctrination and constant chanting may be used as a defense mechanism to ward off what another person is saying or doing is devastating and it is equally devastating when used as a technique for brainwashing or mind control. It may even destroy healthy brain cells. It may also cause an inability to think, to be reasonable or logical.[221]

The authorities cited thus far provide strong evidence that cults use techniques of mind control on their members and that these techniques produce an altered personality characterized by an inability to think rationally.

Mental health professionals also have concluded that there is often a moment when the cult's hold on the individual is broken and the person regains his former identity.[222] This event, which has been termed "snapping," frequently occurs during a deprogramming session. The cult member's appearance undergoes a noticeable change, and he comes out of his trancelike state with the ability to think for himself.[223] According to deprogrammer Ted Patrick, "The moment when that happens is always unmistakable. It's like an emotional dam bursting."[224] Patrick reports one episode in which the moment of snapping was especially vivid:

> Then we went back to our Biblical debate. Gradually she began to listen and respond. She'd challenge and I'd explain—until I saw that she was actually beginning to use her mind again. It was exciting to watch.
>
> After two days of talking, with three of us taking turns, she suddenly gave in. She snapped, just as if someone had turned on a light inside her. The change in her appearance, her expression, her eyes—it was startling. I was amazed. It was like seeing someone return from the grave.[225]

The cult member's regaining of a previously impaired mental capacity during deprogramming is crucial to the operation of consent. The next section of this Case Comment will review the doctrine of capacity to consent at common law.

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217. *Id.* at 972, 141 Cal. Rptr. at 246.

218. *Id.* at 973, 141 Cal. Rptr. at 246.

219. *Id.* at 976–77, 141 Cal. Rptr. at 248. Testimony by another mental health professional contradicted this conclusion. *Id.* at 980, 141 Cal. Rptr. at 250.

220. 98 Misc. 2d 235, 413 N.Y.S.2d 540 (Sup. Ct. 1977).

221. *Id.* at 243, 413 N.Y.S.2d at 545. The court dismissed the indictments, saying that even given the presence of mind control, this was not a crime under New York law. *Id.*

222. F. CONWAY & J. SIEGELMAN, SNAPPING 68 (1978).

223. *Id.*

224. PATRICK & DULACK, *supra* note 40, at 79.

225. *Id.* at 67.

C. *Capacity to Consent at Common Law*

The common law has long recognized that capacity to consent is required in order for consent to operate. The *Restatement (Second) of Torts* states: "To be effective, the consent must be given by one who has the capacity to give it . . . ."[226] The *Restatement* also recognizes that mental deficiency may be one factor affecting capacity to consent.[227] Dean Prosser indicates that infancy, intoxication, or mental incompetence may render one incapable of giving effective consent.[228] These principles were recognized in *Koch v. Stone*,[229] in which the Kentucky Court of Appeals held that an eight-year-old child did not have the capacity to consent to a battery.[230]

Two significant cases deal with the effect of mental incompetence on capacity to consent. In *Hollerud v. Malamis*[231] the plaintiff had consumed sixteen bottles of beer before engaging in an arm wrestling match with the defendant bartender. As a result of the contest, plaintiff sustained injured fingers on his left hand and sued the bartender for the torts of assault and battery. The bartender asserted the plaintiff's consent to the wrestling match as a defense. In reversing the trial court's dismissal of the complaint based on this defense, the Michigan Court of Appeals held that if the plaintiff was incapable of expressing a rational will due to intoxication, the consent was ineffective.[232] The court said that the plaintiff should have been allowed to prove the effect of the intoxication on his mental facilities and that the trier of fact should have been allowed to determine whether he was capable of consenting to the contest. The court concluded that whether the plaintiff was in such an advanced state of intoxication that he was incapable of consenting to the alleged battery presented a genuine issue of material fact.[233]

In *Grannum v. Berard*[234] the plaintiff entered the hospital with chest pains, which were diagnosed later as minor muscle strain. While under the influence of sedatives and narcotics for this condition, the plaintiff consented to minor nasal surgery. Following release, the plaintiff sued the surgeon for battery, arguing that the influence of the drugs had rendered him incapable of consent. The Supreme Court of Washington held that mental capacity to consent is a question of fact to be determined from the circumstances of each case.[235] Although the court concluded that the plaintiff in this case was not so incapacitated by the drugs that he was incapable of giving consent, it indicated that under some circumstances emotional distress may render one incapable of consent.[236]

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226. RESTATEMENT (SECOND) OF TORTS § 892A comment b (1965).
227. *Id.*
228. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 18 (4th ed. 1971).
229. 332 S.W.2d 529 (Ky. 1960).
230. *Id.* at 531–32.
231. 20 Mich. App. 748, 174 N.W.2d 626 (Ct. App. 1969).
232. *Id.* at 763, 174 N.W.2d at 634.
233. *Id.* at 764, 174 N.W.2d at 635.
234. 70 Wash. 2d 304, 422 P.2d 812 (1967).
235. *Id.* at 307, 422 P.2d at 814.
236. *Id.* at 308–09, 422 P.2d at 815.

Thus, irrationality and mental distress can affect the capacity to consent, and the degree to which this has occurred is a question for the trier of fact.

D. *A Model for the Operation of Consent in Deprogramming Cases*

The key issue in *Peterson v. Sorlien*,[237] and a crucial issue in most tort based deprogramming cases, is whether consent given at any time in a deprogramming confinement can be applied retroactively to relieve the defendant of liability for the entire episode. In support of relating back, the majority cites several cases.[238] None of these, however, really raised the relating back issue, as the dissent points out.[239] The dissent, in turn,[240] cites *People v. White*[241] for the proposition that later consent does not relate back to prior acts. However, *White* is not applicable since it dealt with criminal kidnapping rather than a civil tort and was based on the public policy that a crime is not only an offense against a particular individual but against society as a whole.[242] No valid precedent indicates whether consent can relate back in a civil tort action. Therefore, it is appropriate in a deprogramming case to examine the realities of the given situation in light of the capacity doctrines discussed earlier[243] and the mind control techniques used by the cults.[244]

In a typical deprogramming case the consent doctrines can sensibly be applied. The hypothetical process begins with an abduction of the cult member by physical force. This act gives rise to potential actions for assault and battery.[245] A deprogramming session follows, with the elements necessary for false imprisonment and intentional infliction of emotional distress most likely present.[246] At some point the individual snaps;[247] that is, he breaks free of cult influence and regains the ability to think for himself.

The moment of snapping is often the point at which consent is manifested, or at least the point at which conduct begins to indicate consent. Ted Patrick reports having the following conversation with a former cult member immediately following an emotional snapping experience:

> "Ted, I feel so terrible about all the things I said to you, all the names I called you."

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237. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

238. *Id.* at 128. The cases cited are Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Weiss v. Patrick, 453 F. Supp. 717 (D.R.I.), *aff'd mem.*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979); and Faniel v. Chesapeake & Potomac Tel. Co., 404 A.2d 147 (D.C. 1979). For additional information on the *Weiss* case, see *supra* text accompanying notes 81–83. For an analysis of why the *Faniel* opinion fails to support relating back, see 15 AKRON L. REV. 165, 166–67 (1981).

239. 299 N.W.2d 123, 134 (Minn. 1980) (Wahl, J., dissenting in part, concurring in part).

240. *Id.* at 134 n.1.

241. 53 Mich. App. 51, 218 N.W.2d 403 (Ct. App. 1974).

242. *Id.* at 56, 218 N.W.2d at 405. *See* 15 AKRON L. REV. 165, 167 n.12 (1981). The distinction between a societal wrong and an individual wrong is arguably one of the largest single elements distinguishing a crime from a tort. *See* R. KNUDTEN, CRIME IN A COMPLEX SOCIETY 54 (1970).

243. *See supra* text accompanying notes 226–36.

244. *See supra* text accompanying notes 205–21.

245. *See supra* text accompanying notes 150–71.

246. *See supra* text accompanying notes 172–89.

247. *See supra* text accompanying notes 222–25.

"You called me some pretty good ones," I said with a grin. . . .

"Really, I didn't know . . . ."

"I know. You don't have to explain."

"I'm so grateful to you, you've saved my life. I really feel like I've just woke up from some incredible nightmare. Do you forgive me?"

"Of course I do. Don't worry about it. You were a different person saying those things."

"I'll never forget what you've done for me," she said, and came up to me and kissed me.[248]

This expression of gratitude is an implied consent to the actions that produce the result. The consent may be even more obvious, as when the former cult member might say, "I'm glad that you took whatever measures necessary to remove me from the cult." The moment of snapping may be the start of conduct that reasonably can be interpreted as consent. The attitude of the subject at the time of snapping often provides a strong indication of consent to all conduct involved. This in itself is a reason for allowing the consent to relate back; however, the application of capacity doctrines, as below, provides another justification for doing so.

After the abduction, but before snapping, the individual usually exhibits strong signs that he does not consent to the process.[249] However, the cult member may not have the capacity to consent during this period if his thought patterns have been altered by the cult to the point that he is unable to think rationally.[250] Legal commentators have recognized that the cult conditioning process reduces or eliminates an individual's capacity to consent.[251] In terms of the common-law precedents discussed above, the cult member is as incapacitated to consent as if he had consumed sixteen beers[252] or was emotionally distressed due to drug influence.[253] Given this lack of capacity to consent at the outset of deprogramming, the moment of snapping becomes crucial. If at the moment the individual regains the ability to think for himself, he expresses consent, it makes sense to regard that consent as the individual's true attitude toward the entire episode. In other words, at the moment capacity to consent is regained, consent is given. In this light, it seems appropriate to allow the consent to relate back to the beginning of the incident. This is what the majority in *Peterson* had in mind when it stated, "As such, the question of Susan's consent becomes a function of time."[254]

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248. PATRICK & DULACK, *supra* note 40, at 79.

249. *See supra* text accompanying notes 160–61.

250. *See supra* text accompanying notes 205–21.

251. Delgado, *supra* note 214, at 54–55. *See also* Note, *People v. Religious Cults*, 11 SUFFOLK U.L. REV. 1025, 1047 (1977) (cult members suffering from coercively induced mental disability cannot freely consent to removal from the cult).

252. *See supra* text accompanying notes 231–33.

253. *See supra* text accompanying notes 234–36.

254. 299 N.W.2d 123, 128 (Minn. 1980). At least one commentator has made the argument that deprogrammers' methods amount to a kind of reverse mind control. If this is true, the methods would tend to invalidate the subject's consent. *See generally* LeMoult, *Deprogramming Members of Religious Sects*, 46

To determine whether this analysis is appropriate, the trier of fact would need to determine whether the plaintiff had been a victim of mind control to the extent that capacity to consent was impaired. One legal commentator has suggested eight factors that would serve as evidence of mind control for legal purposes:

(1) A sudden, drastic alteration of the individual's value hierarchy, with an abandonment of previously-held goals;
(2) Reduction of cognitive flexibility and adaptability;
(3) Lack of emotion;
(4) Regression of behavior to childlike levels, including dependence on cult leaders for even the most simple decision making;
(5) Physical changes, especially weight loss;
(6) Pathological symptoms such as dissociation and delusions;
(7) Involvement of a cult that has a history of using mind control; and
(8) Presence of dietary and sleep deprivation.[255]

This inquiry could be accomplished by lay testimony without the expert medical testimony of psychiatrists or psychologists.[256]

One further factor may affect the analysis. In most litigation involving tort liability in deprogramming contexts, the cult member has returned to the cult and has brought suit. This usually occurs as a result of the phenomenon known as floating;[257] that is, although the cult member has snapped out of the cult mentality, at some later point his past conditioning causes him to float back into the previous controlled way of thinking, or rather, of not thinking. At this point, after the family wrongly concludes that recovery is complete and removes all restraints, the cult member often returns to the cult and brings suit. In terms of the analysis, this does not present a problem, if the defendants can demonstrate that the individual snapped and consented at some point.

A related problem occurs when the cult member who returns to the cult after deprogramming claims that he never really snapped, but that he pretended to do so and cooperated with his captors to create an opportunity for escape. This argument has been advanced in several cases.[258] If the words and actions of the plaintiff could reasonably be viewed as an expression of consent, those words and actions operate as an apparent consent.[259] An exception to the

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FORDHAM L. REV. 599 (1978). This argument ignores the crucial distinction between the deprogramming process and cultic mind control. The cult indoctrination process uses various techniques to impair or eliminate the subject's ability to think independently. *See supra* text accompanying notes 205–21. The deprogramming process, however, encourages and enables the subject to think clearly and rationally, without attempting to impose any predetermined doctrine or world view. *See supra* text accompanying notes 50–55, 222–25.

255. Delgado, *supra* note 214, at 70–71.

256. *Id.* at 71.

257. *See supra* text accompanying note 58.

258. *See, e.g.*, Weiss v. Patrick, 453 F. Supp. 717 (D.R.I.), *aff'd mem.*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979).

259. *See supra* text accompanying notes 199–204.

model exists when a cult member manages to escape without ever manifesting any consent at all.[260] In all other deprogramming situations, consent operates as a complete defense to tort liability.[261]

V. CONCLUSION

The cult phenomenon burst onto the American scene in the 1970s. Thousands of young people joined the Moonies, The Way, and the Hare Krishna. Parents, concerned over the mental health of their children, turned to professional deprogrammers for help. Together, the parents and deprogrammers abducted cult members and attempted to free their minds from cult domination. Deprogrammers were prosecuted for kidnapping, and many subjects of unsuccessful deprogrammings recovered under federal civil rights laws.

Peterson v. Sorlien[262] was the first case to discuss tort liability for deprogramming attempts. The plaintiff's parents had attempted to deprogram her from the influence of The Way. The Supreme Court of Minnesota upheld a jury verdict for the defendant parents and deprogrammers, applying plaintiff's delayed consent retroactively to cover the entire deprogramming episode.

The elements of assault, battery, false imprisonment, and intentional infliction of emotional distress are present in many deprogramming attempts. Consent operates as a defense to all these torts, but only when there is capacity to consent. The techniques of mind control used by the cults impair the individual's capacity to consent, and the sudden release of the cult member from that mind control is the goal of deprogramming. If at the moment the individual regains the capacity to think for himself he expresses consent, that consent reveals his true attitude toward the entire episode and should be applied retroactively.

The *Peterson* decision makes good common sense and should be followed in all future tort litigation involving deprogramming attempts.

Douglas H. Cook

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260. While infrequent, this does happen. *See* PATRICK & DULACK, *supra* note 40, at 164–66. In such a case consent is eliminated as a possible defense, and tort liability presumably would lie.

261. Following the court's decision in *Peterson*, the plaintiff filed a petition for a writ of certiorari in the United States Supreme Court. The Court denied certiorari on March 30, 1981. 450 U.S. 1031 (1981). The essence of plaintiff's petition was that by allowing consent to operate as a complete defense, the State of Minnesota had abrogated plaintiff's cause of action against her parents and the deprogrammers, thereby constituting state action in violation of plaintiff's first amendment right to freedom of religion. Petition for writ of certiorari at i, 8–9. For a discussion of the constitutional issues involved in deprogramming, see Delgado, *supra* note 214, at 25–49.

262. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).